

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)	
STEEL BUILDINGS SYSTEMS, INC.,)	
CHARTER MORTGAGE & INVESTMENT,)	
INC., KIRK L. BRYSON, and)	U.S. EPA Docket No. 95-20
GENEVIEVE FULLER)	
)	UNILATERAL ADMINISTRATIVE
)	ORDER FOR PARTIAL
Proceeding Under Section 106(a))	PERFORMANCE OF REMOVAL
of the Comprehensive Environmental)	ACTION
Response, Compensation, and)	
Liability Act of 1980,)	
42 U.S.C. § 9606(a)).)	

I. AUTHORITY

This Unilateral Administrative Order ("Order") is issued on this date pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-8-A and 14-14-C. This authority has been redelegated to the Director, Hazardous Waste Management Division, EPA, Region 9 ("Director") by Region 9 Delegations 1290.41 and 1290.42.

II. PARTIES BOUND

1. This Order shall apply to and be binding upon Steel

Building Systems, Inc. ("SBS"), Charter Mortgage Investment, Inc. ("CMI"), Kirk Bryson, and Genevieve Fuller (collectively "Respondents"), and their agents, successors and assigns. No change in ownership or operational status will alter a Respondent's obligations under this Order. Each Respondent shall provide a copy of this Order to all contractors, subcontractors, and consultants which are retained by each Respondent to perform the work required by this Order, within five (5) days after the Effective Date of this Order or within five (5) days of retaining their services. Notwithstanding the terms of any contract or agreement, each Respondent is responsible for compliance with this Order and for ensuring that their employees, contractors, and agents comply with this Order.

2. No Respondent may convey any title, easement, or other interest it may have in any property comprising the site, as the term "site" is defined below, without a provision permitting the continuous implementation of the provisions of this Order. Any Respondent wishing to transfer any title, easement, or other interest it may have in any property comprising the site shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. Any such Respondent shall advise U.S. EPA six (6) months in advance of any anticipated transfer of interest.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations

promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the Exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments & Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

"Unilateral Order" or "Order" shall mean this Unilateral Administrative Order and all exhibits attached hereto. In the event of conflict between this Unilateral Order and any exhibit, this Unilateral Order shall control.

"Construction" shall mean the each Respondent's, or its contractor's, installation/construction of the specific response actions each is required to perform, as set forth in exhibit A.

"Contractor" shall mean each Respondent's contractor(s) and subcontractors contracted to perform the installation/construction, and operation and maintenance activities relating to any of the specific response actions at the Site each Respondent is required to perform.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until

the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

— "Identified Contamination" shall mean any contamination, or threat of contamination, resulting from the release, or threat of release, of any hazardous substances, pollutants, contaminants, or solid waste identified in the administrative record for the Site as of the effective date of EPA's Action Memorandum for the Site, dated March 21, 1995.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

"Operation and Maintenance activities" shall include future operation and maintenance of all structures built or installed to contain the arsenic contamination at the Site until such time as EPA approves the cessation of such activities.

"Paragraph" shall mean a portion of this Unilateral Order identified by an Arabic numeral.

"Parties" shall mean the United States, Steel Building Systems, Inc., Charter Mortgage, Inc., Kirk Bryson, and Genevieve Fuller.

"Action Memorandum" shall mean the Action Memorandum concurred on by the State of California, issued by the United States Environmental Protection Agency on March 21, 1995.

"Response actions" shall be those specific work items each Respondent is required to perform at the Site pursuant to this Unilateral Order, as set forth in exhibit "A".

"Respondents" shall mean Steel Building Systems, Inc., Charter Mortgage, Inc., Kirk Bryson, and Genevieve Fuller, both individually and collectively.

"Section" shall mean a portion of this Unilateral Order identified by a Roman numeral and including one or more paragraphs.

"Site" shall mean the Central Eureka Mine Superfund Site, which includes those parcels of land in the Gold Quartz Terrace subdivision, the Mesa d'Oro subdivision, the Vista Ray subdivision, the Central Eureka minehead, and the Allen Ranch, all of which are located in Sutter Creek, Amador County, California.

"State" shall mean the State of California, and all of its political subdivisions, including the California Department of Toxic Substances Control ("DTSC").

"United States" shall mean the United States of America.

IV. FINDINGS OF FACT

4. From approximately 1912 to 1958, the Central Eureka Mine Company operated a gold mine, now known as the Central Eureka Mine, located in Amador County, California. The Central Eureka Mine Company utilized certain parcels of land adjacent to or in close proximity to the Central Eureka Mine for the disposal

and storage of tailings from the mining operations. The land utilized for the disposal and storage of tailings, or upon which tailings have since come to be located, occupies those parcels of land identified on Amador County Assessor's Map, Book 18, Pages 29, 33, and 34, now known as the Gold Quartz Terrace, Vista Ray, and Mesa D'Oro subdivisions, as well as land located at the Central Eureka minehead, and on the Allen Ranch Property, all of which are located in Sutter Creek, California.

-5. In April, 1994, in response to complaints of worker exposure to mine tailings, the California Environmental Protection Agency ("Cal-EPA") collected soil samples from the site for analysis. All samples were analyzed for total metals concentrations. Chemical arsenic concentrations ranged between 107 and 473 milligrams per kilogram (mg/kg). Cal-EPA conducted additional sampling in May, 1994, collecting additional soil samples. All samples were again analyzed for total metals concentration. Total arsenic concentrations were found to range from 115 to 1320 mg/kg.

6. In July 1994, Cal-EPA requested assistance from the United States EPA Emergency Response Section ("ERS"). In August 1994, EPA took an additional 158 surface soil samples, four stream sediment samples, and two water samples for analysis for arsenic. The mean concentration of arsenic at the site was found to be 255 mg/kg.

7. From September 1994, to January 1995, EPA took an additional 750 samples to more accurately and fully identify the

extent of the arsenic contamination at the Site. The results of this sampling indicated that there was extensive arsenic contamination at the Site.

8. Based on the results of the samples taken from the Site, and a review of available literature concerning the bioavailability of arsenic, EPA determined in its Action Memorandum dated, March 21, 1995, that response actions were required to address an imminent and substantial endangerment to human health and to prevent further releases and/or threatened releases of arsenic into the environment.

9. Steel Building Systems, Inc., from approximately 1988 to approximately 1993, owned portions of the site. During that time, disposal of hazardous substances occurred on those portions of the site, as the term "disposal" is defined in section 101(29) of CERCLA, 42 U.S.C. §9601(29). Charter Mortgage, from approximately 1988 to the present, owned or currently owns portions of the site on which hazardous substances have been disposed of. As to those portions of the site previously owned by Charter Mortgage, disposal of hazardous substances occurred on those portions of the site, as the term "disposal" is defined in section 101(29) of CERCLA, 42 U.S.C. §9601(29). Kirk Bryson, since approximately 1960 to the present, and Genevieve Fuller, since approximately 1991 to the present, are current owners of the minehead area, a portion of the site.

V. CONCLUSIONS OF LAW

10. The Central Eureka Mine Superfund site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

11. The Respondents, Steel Building Systems, Inc., Charter Mortgage & Investments, Inc., Kirk L. Bryson, and Genevieve Fuller are each "persons" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601 (21);

12. Each Respondent either owned at times of disposal, or currently owns a portion of the site and/or facility where hazardous substances have come to be located. The Respondents are each "liable parties" within the meaning of Section 107(a), 42 U.S.C. §9607(a), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. §9606(a);

13. Arsenic is a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14);

14. The past, present or future migration of hazardous substances from the Site constitutes an imminent and substantial endangerment due to the actual or threatened "release" of hazardous substances, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22);

VI. DETERMINATIONS

15. The Director of the Hazardous Waste Management Division, U.S. EPA Region IX, has determined that an actual or threatened release of hazardous substances from each portion of the site and/or facility previously owned at times of disposal or

currently owned by the Respondents facility may present an imminent and substantial endangerment to the public health or welfare or the environment.

16. The actions required by this Order are necessary to protect the public health, welfare and the environment.

17. If performed satisfactorily, the actions required by this Order are consistent with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP").

VII. NOTICE TO THE STATE

18. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), U.S. EPA has notified the State of California of the issuance of this Order by providing the Regional Board and California Department of Toxic Substances Control a copy of this Order.

VIII. WORK TO BE PERFORMED

A. General Provisions:

19. All work shall be conducted in accordance with: the applicable portions of the EPA Action Memorandum, dated March 21 1995 (attachment A); CERCLA; the NCP; U.S. EPA Region 9 Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions of such documents provided by U.S. EPA; other applicable U.S. EPA guidance documents; and any report, document or deliverable prepared by U.S. EPA because any Respondent fails to comply with this Order.

20. All plans, schedules, and other reports that require U.S. EPA's approval and are required to be submitted by a particular Respondent pursuant to this Order are incorporated into, and enforceable under, this Order upon approval by U.S. EPA.

21. All work performed by or on behalf of each Respondent pursuant to this Order shall be performed by qualified individuals and/or contractors with expertise in hazardous waste site investigation. The qualifications of the persons, contractors, and subcontractors undertaking the work for each Respondent shall be subject to U.S. EPA review.

22. U.S. EPA will oversee each Respondent's activities as specified in Section 104(a)(1) of CERCLA Section, 42 U.S.C. §9604(a)(1). Each Respondent will support U.S. EPA's initiation and conduct of activities carried out in its oversight responsibilities. Each Respondent shall also cooperate and coordinate the performance of all work required to be performed under this Order with all other work being performed at the site, including work performed by U.S. EPA, the State, another Respondent, or any other party performing work at the site with the approval of EPA.

B. Work and Deliverables:

Based on the Findings of Fact, Conclusions of Law, and Determinations, U.S. EPA hereby orders each Respondent to perform the specific work set forth below under the direction of the U.S. EPA's On-Scene Coordinator, and to comply with all the

requirements of this Order:

23. Respondents Kirk Bryson and Genevieve Fuller shall: 1) erect a fence around the perimeter of the minehead area to restrict access in accordance with a design approved by EPA; 2) construct and install a sediment catch basin on their property in a location approved by EPA and in accordance with a design approved by EPA; 3) erect a six foot (6') high chain link fence around the perimeter of the sediment catch basin once installed to restrict access to the same; and 4) provide for and/or perform all operation and maintenance required to keep the sediment catch basin operational throughout its lifetime.

24. Respondents Steel Building Systems, Inc., and Charter Mortgage & Investments, Inc., shall perform all work required to remediate those parcels of land located in Groups 3 and 5 at the site, as more specifically set forth in attachment "A" to this UAO. This shall include, as required, the excavation of contaminated soil from those parcels, backfilling the excavated portions of the parcels with clean fill, relandscaping of the excavated areas, and removal and disposal of the excavated soil to the designated on-site disposal location on the Allen Ranch or to an alternative location specified by EPA. Respondents SBS and CMI shall be required to commence work on the Group 3 and 5 parcels as directed by EPA's OSC on or before August 14, 1995.

25. Each Respondent, for the specific work required to be performed pursuant to this Order shall:

- a. provide notification to U.S. EPA as described below;
- b. prepare a Quality Assurance Project Plan ("QAPP"); and
- c. prepare a Health & Safety Plan.

26. Each Respondent shall notify U.S. EPA in writing of the name, title and qualifications of the individual(s) who will be responsible for carrying out the terms of this Order, and the name(s) of any contractor(s) or subcontractor(s). Notification will be provided within fourteen (14) days after the Effective Date of this Order.

27. If U.S. EPA disapproves in writing of any person's or contractor's technical and/or experience qualifications, U.S. EPA will notify the appropriate Respondent in writing, and that Respondent shall subsequently notify U.S. EPA within fourteen (14) days of Respondent's receipt of U.S. EPA's written notice, of the identity and qualifications of the replacement(s). A subsequent U.S. EPA disapproval of the replacement(s) shall be deemed a failure to comply with the Order.

28. Subsequent to approval by U.S. EPA of the individual(s), contractor(s), or subcontractor(s) who will be responsible for the investigation, each Respondent may propose that different individual(s), contractor(s) and/or subcontractor(s) to direct and supervise the work required by this Order. If a Respondent wishes to propose such a change, the Respondent shall notify EPA in writing of the name, title, and

qualifications of the proposed individual(s) and the name(s) of proposed contractor(s) and/or subcontractor(s). Any such individual(s), contractor(s) and/or subcontractor(s) shall be subject to approval by U.S. EPA. U.S. EPA shall give the requesting Respondent its approval or disapproval within fourteen (14) days of receiving from the Respondent the information required by this paragraph. The naming of any replacement(s) by a Respondent shall not relieve the Respondent of any of its obligations to perform the work required by this Order. A subsequent U.S. EPA disapproval of the replacement(s) shall be deemed a failure to comply with the Order.

29. Each Respondent shall prepare a Health and Safety Plan in conformance and compliance with Occupational Safety & Health Act ("OSHA") regulations and protocols. The Health and Safety Plan will include the eleven (11) elements described in U.S. EPA Guidance (EPA, October 1988), such as a health and safety risk analysis, a description of monitoring and personal protective equipment, and medical monitoring. The Health & Safety Plan is due on August 14, 1995.

30. Each Respondent will notify U.S. EPA of its respective field activities at least one week before initiating them so that U.S. EPA may adequately schedule oversight tasks.

31. U.S. EPA shall review, comment, and approve or disapprove each plan, report, or other deliverable submitted by any Respondent. All U.S. EPA comments on draft deliverables shall be incorporated by the Respondent(s). U.S. EPA shall

notify the appropriate Respondent(s) in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, U.S. EPA shall specify the reasons for such disapproval, U.S. EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by U.S. EPA, U.S. EPA shall first notify the particular Respondent(s) and then may draft its own report, document or deliverable and incorporate it as part of this Order, and/or seek penalties from the Respondent(s) for failing to comply with this Order, and/or conduct the remaining work required by this Order.

32. All documents, including technical reports, and other correspondence to be submitted by the Respondents pursuant to this Order, shall be sent by over-night mail to the following addressees or to such other addressees as U.S. EPA hereafter may designate in writing, and shall be deemed submitted on the date received by U.S. EPA. Each Respondent shall submit two (2) copies of each document to U.S. EPA, and two (2) copies to Department of Toxic Substances Control.

33. For purposes of this Order, U.S. EPA's authorized representatives shall include, but not be limited to, the Department of Toxic Substances Control, and consultants and contractors hired by U.S. EPA to oversee activities required by this Order.

IX. OTHER APPLICABLE LAWS

34. Each Respondent shall undertake all actions required by this Order in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided under CERCLA or unless a given Respondent obtains a variance or exemption from the appropriate governmental authority.

X. RECORD PRESERVATION

35. Each Respondent shall maintain, during the pendency of this Order and for a minimum of ten (10) years after U.S. EPA provides notice to that Respondent that the work has been completed, a central depository of the records and documents required to be prepared under this Order. In addition, each Respondent shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in its possession or in the possession of its employees, agents, contractors, or attorneys. After this ten-year period, each Respondent shall notify U.S. EPA at least thirty (30) days before the documents are scheduled to be destroyed. If U.S. EPA so requests, each Respondent shall provide these documents to U.S. EPA.

XI. DESIGNATED PROJECT MANAGERS

36. U.S. EPA designates Brad Shipley, an employee of Region 9 of U.S. EPA, as its primary On-Scene Coordinator ("OSC") who shall have the authorities, duties, and responsibilities vested in the OSC by the NCP. This includes, but is not limited to, the

authority to halt, modify, conduct, or direct any tasks required by this Order and/or undertake any response actions (or portions of the response action) when conditions present or may present a threat to public health or welfare or the environment as set forth in the NCP. Within fifteen (15) days of the Effective Date of this Order, Respondent(s) shall designate a Project Coordinator who shall be responsible for overseeing Respondent's implementation of this Order. The U.S. EPA OSC will be U.S. EPA's designated representative at the site. To the maximum extent possible, all oral communications between Respondent(s) and U.S. EPA concerning the activities performed pursuant to this Order shall be directed through U.S. EPA's OSC and each Respondent's Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph 32 above.

37. U.S. EPA and Respondent(s) may change their respective OSC and Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least seven (7) days prior to the change except in the case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.

38. Consistent with the provisions of this Order, the U.S. EPA designates Dan Suter as an alternate OSC, in the event Brad Shipley is not present at the site or is otherwise unavailable.

During such times, Mr. Suter shall have the authority vested in the On-Scene Coordinator ("OSC") by the NCP, as set forth in paragraph 36 above.

39. The absence of the U.S. EPA OSC from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the U.S. EPA OSC under federal law.

XII. MODIFICATION OF WORK REQUIRED

40. In the event of unanticipated or changed circumstances at the facility, Respondent(s) shall notify the U.S. EPA OSC by telephone within twenty-four (24) hours of discovery of the new or changed circumstances. This verbal notification shall be followed by written notification postmarked within three (3) days of discovery of the new or changed circumstances.

41. The Director of the Hazardous Waste Management Division, U.S. EPA Region IX, may determine that in addition to tasks addressed herein, additional work may be required. Where consistent with Section 106(a) of CERCLA, the Director of the Hazardous Waste Management Division, U.S. EPA Region IX, may direct as an amendment to this Order that Respondent(s) perform these response actions in addition to those required herein. Respondent shall implement the additional tasks which the Director of the Hazardous Waste Management Division, U.S. EPA Region IX, identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by the Director of the Hazardous Waste Management Division, U.S. EPA Region IX in any modifications to this Order.

XIII. SITE ACCESS

42. Respondent(s) shall permit U.S. EPA and its authorized representatives to have access at all times to the Site to monitor any activity conducted pursuant to this Order and to conduct such tests or investigations as U.S. EPA deems necessary. Nothing in this Order shall be deemed a limit upon U.S. EPA's authority under federal law to gain access to the Site.

43. To the extent that any Respondent requires access to land other than land it owns in carrying out the terms of this Order, that Respondent shall, within fifteen (15) days of the Effective Date of this Order, obtain access for U.S. EPA, its contractors and oversight officials; state oversight officials and state contractors; and that Respondent or its authorized representatives. If that Respondent fails to gain access within fifteen (15) days, it shall continue to use best efforts to obtain access until access is granted. For purposes of this paragraph, "best efforts" includes but is not limited to, seeking judicial assistance, providing indemnification, and/or the payment of money as consideration for access. If access is not provided within the time referenced above, U.S. EPA may obtain access under Sections 104(e) or 106(a) of CERCLA.

XIV. DELAY IN PERFORMANCE

44. Any delay in performance of any requirement of this Order that, in the U.S. EPA's judgment, is not properly justified by a given Respondent under the terms of this Section shall be considered a violation of this Order. Any delay in performance

of any requirement of this Order shall not affect any other Respondent's obligations to fully perform all of their respective requirements under the terms and conditions of this Order.

45. Each Respondent, as applicable, shall notify U.S. EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to U.S. EPA's primary OSC within twenty-four (24) hours after Respondent first knew or should have known that a delay might occur. That Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying U.S. EPA by telephone, that Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why that Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

46. If a Respondent is unable to perform any activity or submit any document within the time required under this Order, that Respondent may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect any Respondent's

obligation to comply with the requirements of this Order.

47. If U.S. EPA determines that good cause exists for an extension of time, it may grant a request made by a Respondent pursuant to paragraph 46 above, and specify in writing to the requesting Respondent the new schedule for completion of the activity and/or submission of the document for which the extension was requested.

XV. ENDANGERMENT AND EMERGENCY RESPONSE

-48. In the event of any action or occurrence during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent(s) shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify U.S. EPA's primary OSC, or, if the primary OSC is unavailable, U.S. EPA's alternate OSC. If neither of these persons is available, Respondent(s) shall notify the U.S. EPA Emergency Response Unit, Region 9, phone number (415) 744-2000. Respondent(s) shall take such action(s) in consultation with U.S. EPA's OSC and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan.

49. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or

threatened release of hazardous substances on, at, the Site.

XVI. ASSURANCE OF ABILITY TO COMPLETE WORK

50. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondent(s) shall submit to U.S. EPA a certification that Respondent(s) or its contractor(s) and subcontractor(s) have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent(s) pursuant to this Order. Respondent(s) shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order.

XVII. DISCLAIMER

51. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent(s), or its employee(s), agent(s), successor(s), assign(s), contractor(s), or consultant(s) in carrying out any action or activity pursuant to this Order. Neither U.S. EPA nor the United States shall be held as a party to any contract entered into by Respondent(s), or its employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XVIII. ENFORCEMENT AND RESERVATIONS

52. U.S. EPA reserves the right to bring an action against Respondent(s) under Section 107 of CERCLA, 42 U.S.C. §9607, for

recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondent(s). This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. §9607.

53. Notwithstanding any other provision of this Order, at any time during the response action, U.S. EPA may perform its own studies, complete the response action (or any portion of this response action) and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

54. Nothing in this Order shall preclude U.S. EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as U.S. EPA may deem necessary, or from requiring Respondent(s) in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. §9607(a), et seq., or any other applicable law. Respondent(s) shall be liable under CERCLA Section 107(a), 42 U.S.C. §9607(a), for the costs of any such additional actions.

55. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

56. Notwithstanding compliance with the terms of this Order, including the completion of an U.S. EPA-approved response actions, Respondent(s) are not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by U.S. EPA.

57. U.S. EPA reserves the right to take any enforcement action pursuant to CERCLA and/or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

58. U.S. EPA expressly reserves all rights and defenses that it may have, including the U.S. EPA's right both to disapprove of work performed by Respondent(s) and to request that Respondent(s) perform tasks in addition to those detailed in this Order, as provided in Section VIII (Work to be Performed) of this Order.

59. This Order does not release Respondents, individually or collectively, from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand which lawfully may be asserted by representatives of the United States or the State of California.

60. No informal advice, guidance, suggestions, or comments by U.S. EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent(s) will be construed as relieving any Respondent of its obligation to obtain such formal approval as may be required by this Order.

XIX. REIMBURSEMENT OF OVERSIGHT COSTS

61. Each Respondent shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. U.S. EPA may submit to Respondent(s) on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondent(s) shall, within thirty (30) days of receipt of the bill, remit by cashiers or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Region 9, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Respondent shall send a cover letter with any check and the letter shall identify the Central Eureka Mine Site by name and make reference to this Order. Respondent shall send simultaneously to the U.S. EPA OSC notification of any amount paid, including a photocopy of the check.

62. Interest at the rate established under section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

XX. NOTICE OF INTENT TO COMPLY

63. Each Respondent shall, within two (2) days of the Effective Date of this Order, provide written notice to U.S. EPA of Respondent's irrevocable intent to comply with this Order. Failure to respond, or failure to agree to comply with this

Order, shall be deemed a refusal to comply with this Order.

XXI. OPPORTUNITY TO CONFER

64. Each Respondent may, within three (3) days of receipt of this Order, request a conference with Chief, Remedial Action Branch Hazardous Waste Management Division, or whomever the Chief may designate. If requested, the conference shall occur within three (3) days of the request, unless extended by mutual agreement of the Parties, at U.S. EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

65. At any conference held pursuant to a Respondent's request, the Respondent may appear in person, or be represented by an attorney or other representative. If a Respondent desires such a conference, the Respondent shall contact David Rabbino, Assistant Regional Counsel, at (415) 744-1336.

66. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which a Respondent intends to comply with this Order. If such a conference is held, the Respondent may present any evidence, arguments or comment regarding this Order, its applicability, any factual determinations upon which the Order is based, the appropriateness of any action which the Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to U.S. EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and

does not constitute a proceeding to challenge this Order. It does not give a Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this Order. Any such writing should be directed to David Rabbino, Assistant Regional Counsel, at the address cited above.

67. Each Respondent is hereby placed on notice that U.S. EPA will take any action which may be necessary in the opinion of U.S. EPA for the protection of public health and welfare and the environment, and each Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the costs of those government actions.

XXII. SEVERABILITY

68. If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

XXIII. PENALTIES FOR NONCOMPLIANCE

69. Each Respondent is advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any

portion thereof, may subject a Respondent to a civil penalty of up to \$25,000 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject Respondent(s) to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondent to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

XXIV. EFFECTIVE DATE

70. This Order is effective three (3) days following receipt by Respondent(s) unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second (2nd) day following the day of such conference unless modified in writing by U.S. EPA.

XXV. TERMINATION AND SATISFACTION

71. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from U.S. EPA that Respondent has demonstrated, to the satisfaction of U.S. EPA, that all of the terms of this Order, including any additional tasks which U.S. EPA has determined to be necessary, have been completed.

IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By: Keith Takata
Jeff Zelikson, Director
Hazardous Waste Management Division
Region 9

Date: AUG 1 1995

EPA Region 9 Contacts:

Brad Shipley
On-Scene Coordinator (H-6-5)
Hazardous Waste Management Division
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 744-2287

David Rabbino
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 744-1336